

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

NATALIE S.,

Claimant,

OAH Case No. L2006020306

And

REGIONAL CENTER OF ORANGE
COUNTY,

Service Agency.

DECISION

Administrative Law Judge Greer D. Knopf, State of California, Office of Administrative Hearings, heard this matter in Santa Ana, California on March 28, 2006.

Mary Kavli, Manager of Fair Hearings and Mediations, Regional Center of Orange County represented the service agency, Regional Center of Orange County.

David S., attorney at law and the father of the claimant, represented the claimant Natalie S. who was not present at the hearing.

The matter was submitted on March 28, 2006.

ISSUES

1. Is the diagnosis of mild mental retardation an accurate diagnosis for the claimant?
2. If not, should the Regional Center of Orange County be required to remove from the claimant's file, from the Individual Program Plan, and from the Client Development Evaluation Report, any reference to a diagnosis of mild mental retardation?

FACTUAL FINDINGS

1. Claimant, Natalie S. ("the claimant" or "Natalie") is a three and one-half year-old girl who is a client of the Regional Center of Orange County ("the regional center"). The claimant's birthday is September 2, 2002. The claimant recently transitioned from the Early Start program to receiving services from the regional center under the Lanterman Act.

2. The claimant is eligible to receive services from the regional center based on a diagnosis of Autistic Disorder and a diagnosis of Mild Mental Retardation ("MMR"). The claimant's parents assert that the regional center improperly assigned Natalie with the diagnosis of MMR. Therefore, they seek to have that diagnosis removed from all future regional center records concerning the claimant.

3. In March 2005, the regional center began planning to transition the claimant from the Early Start program to determine if she would be eligible for ongoing regional center services under the Lanterman Act when she turned three years old in September. After reviewing the claimant's case, the regional center determined that the claimant would indeed be eligible for the Lanterman Act services. The regional center based the claimant's eligibility on a diagnosis of Autistic Disorder and MMR.

4. The diagnostic team reviewing the claimant's case included the regional center's psychologist, Dr. Mary Parpal. Dr. Parpal evaluated the claimant's developmental status by conducting a review of all the current information available to the regional center at the time of said evaluation. Dr. Parpal did not meet with Natalie to examine her in person. Dr. Parpal reviewed developmental assessments of the claimant that had been conducted by the local school district, Placentia-Yorba Linda Unified School District. The school district assessments did not include any measurement of Natalie's intelligence quotient. This was because it was concluded that the appropriate intelligence test, the Merrel Palmer test, that is typically given to a young child of Natalie's age would have to be modified too much to be given to Natalie. Therefore, the test would not yield valid results. There was no specific reason stated by the testers for the necessity to modify the test, but it could very well have been due to Natalie's severe autistic behaviors that could make it very difficult for her to take such a test.

As a result, a substitute test was given to Natalie known as the Developmental Activities Screening Inventory ("the DASI"). The DASI is a screening inventory that provides a developmental quotient ("DQ") and not an intelligence quotient ("IQ"). A DQ is different from an IQ. Natalie's DQ from the DASI test was 56. Dr. Parpal also reviewed a developmental assessment conducted by the Intervention Center for Early Childhood and a survey known as the Vineland Survey that summarizes a child's developmental abilities based on information provided by the claimant's parents. Based upon the review of these assessments, Dr. Parpal concluded that since the claimant displayed global deficits in cognitive delays combined with significant adaptive deficits, she was suffering from MMR in addition to diagnosis of Autistic Disorder. Therefore,

in September 2005, Dr. Parpal added the diagnosis of MMR to the claimant's regional center file in addition to the original diagnosis of Autistic Disorder. The regional center thereafter reported these two diagnoses to the state on the Client Development Evaluation Report ("CDER"). The regional center is required to report all diagnosed developmental disabilities for each client in a CDER each year so that the state is able to accurately track disabilities and anticipate budgetary needs.

5. When the regional center communicated Dr. Parpal's diagnosis of MMR to the claimant's family, the family questioned that diagnosis. Thereafter, they consulted Dr. Mitchel D. Perlman, a clinical forensic psychologist. In his practice, Dr. Perlman specializes in psychological testing. Dr. Perlman reviewed all the documentation that Dr. Parpal reviewed with the exception of one additional developmental assessment that was conducted by Intervention Center for Early Childhood. He concluded that there was not sufficient documentation to support a diagnosis of MMR for Natalie. The reason for Dr. Perlman's conclusion was that Natalie was never tested for and assigned an IQ. Dr. Perlman testified very persuasively that the diagnosis of MMR cannot be made without first determining the patient's IQ. The diagnosis of MMR requires that a patient be given some form of a standardized measure of intelligence test. The only exception to this requirement is for an infant and Natalie would not be considered an infant at age 3 years old.

Dr. Perlman based his opinion on his own experience and expertise as well as the diagnostic tools and definitions provided in the Diagnostic and Statistical Manual of Mental Disorders-4th edition published by the American Psychiatric Association ("the DSM-IV"). The DSM-IV sets forth the diagnostic criteria used to determine if a person is suffering from MMR. According to the DSM-IV, a diagnosis of mental retardation is properly made when, among other things, a person has a significantly sub-average intellectual functioning which is defined as an IQ of 70 or below. If it is not possible to successfully test a patient for IQ, but the patient demonstrates other symptoms of mental retardation, then a diagnosis of mental retardation-severity unspecified, may be warranted and appropriate. However, the regional center has not assigned a diagnosis of mental retardation-severity unspecified, it has assigned a diagnosis of MMR for the claimant.

6. Dr. Parpal and Dr. Perlman both testified at the hearing in this matter regarding their review of the claimant's case and their respective conclusions regarding the claimant's diagnosis. Dr. Parpal is a highly qualified expert in her field as a child psychologist with the regional center and her testimony was articulate and elucidating. However, Dr. Perlman specializes in the area of psychological testing and appeared to be more knowledgeable on the issue of proper diagnostic testing. Dr. Perlman's testimony regarding proper diagnostic techniques was therefore more persuasive. Dr. Perlman concluded there was insufficient diagnostic information presented to the regional center to warrant attaching a diagnosis of MMR to the claimant. Dr. Perlman's expert testimony in this regard was very persuasive, particularly in light of his extensive credentials in the specific area of diagnostic testing. The administrative law judge

accepts the very credible and persuasive opinion testimony of Dr. Perlman as it augments and explains the testimony of Dr. Parpal.

LEGAL CONCLUSIONS

1. Eligibility for regional center services under the Lanterman Act is determined if the individual is found to have a qualifying developmental disability. The qualifying developmental disabilities are listed in Welfare and Institutions Code section 4512(a). These disabilities are: (1) Mental retardation; (2) Cerebral palsy; (3) Epilepsy; (4) Autism; or, (5) Conditions similar to mental retardation or requiring treatment similar to that required by mentally retarded persons. If an individual has one of these five conditions, it must have occurred before the age of eighteen, constitute a substantial handicap and be expected to continue indefinitely in order for the individual to meet the definition of developmentally disabled under the Lanterman Act. (Welf. & Inst. Code § 4512(a)).

2. In determining whether an individual has a qualifying developmental disability, the regional center is permitted to consider all evaluations and tests available, including, but not limited to, "...intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests or evaluations that have been performed by, and are available from, other sources." (Welf. & Inst. Code section 4643(b)). If the regional center needs to assess an individual that assessment may include "... collection and review of available historical diagnostic data, provision or procurement of necessary tests and evaluation, and summarization of developmental levels and service needs..."(Welf. & Inst. Code section 4643(a)).

3. The claimant herein was given a diagnosis of Autistic Disorder and later assigned the additional diagnosis of MMR. The evidence persuasively established that there is insufficient evidence at this time to assign the diagnosis of MMR to the claimant under Welfare and Institutions Code section 4512(a), as set forth in Findings 1- 6.

4. The regional center should not assign a diagnosis to the claimant of MMR in its future documentation unless and until the claimant is properly diagnosed with MMR as set forth in Findings 1-6.

ORDER

1. The claimant's appeal to declare that the diagnosis of mild mental retardation given to the claimant by the Regional Center of Orange County is not currently an accurate diagnosis is granted.

2. The Regional Center of Orange County shall not include any reference to a diagnosis of mild mental retardation in any future documentation created for the

claimant's regional center file, the claimant's Individual Program Plan, or the claimant's Client Development Evaluation Report.

3. This Order shall not preclude the Regional Center of Orange County from re-evaluating the claimant's developmental disability in the future and assigning any additional diagnosis that is properly warranted under the generally accepted criteria set forth in the DSM-IV.

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within the State of California.

DATED: _____

GREER D. KNOPF
Administrative Law Judge
Office of Administrative Hearings